

**2819. Adulteration of tomato catsup. U. S. v. 90 Barrels of Tomato Catsup. Default decree of condemnation, forfeiture, and destruction.** (F. & D. No. 3262. S. No. 1201.)

On December 1, 1911, the United States Attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 90 barrels of tomato catsup remaining unsold in the original unbroken packages at Boston, Mass., alleging that the product had been shipped by the Huss-Edler Preserve Co., Chicago, Ill., and transported from the State of Illinois into the State of Massachusetts, and charging adulteration in violation of the Food and Drugs Act. The product bore no label.

Adulteration of the product was alleged in the libel for the reason that it consisted in part of filthy, decomposed, and putrid animal and vegetable substance.

On February 5, 1913, Fred C. Edler, doing business as the Huss-Edler Preserve Co., claimant, having failed to appear, judgment of condemnation and forfeiture was entered and it was ordered by the court that the product should be destroyed by the United States marshal, and that the costs of the proceedings, amounting to \$101.18, be recovered of said claimant.

B. T. GALLOWAY, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *February 3, 1914.*

**2820. Alleged misbranding of gin. U. S. v. 36 Bottles of London Dry Gin. Tried to the court and a jury. Verdict for claimant. Motion for a new trial refused. Bill of exceptions, assignments of error, petition for writ of error and writ of error filed. Judgment of district court reversed by the United States Circuit Court of Appeals for the Third Circuit and a new trial granted.** (F. & D. No. 3265. S. No. 1223.)

On January 8, 1912, the United States Attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of three cases each containing 12 quart bottles of gin remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the product had been shipped on or about December 19, 1911, and transported from the State of New York into the State of Pennsylvania, and charging misbranding in violation of the Food and Drugs Act. The product was labeled "Sir Robert Burnett & Co. Celebrated Trade Mark London Dry Gin Distilled in New York, as at Vauxhall Distillery, London, in glass stoppered bottles which will entirely prevent any possibility of discoloration or loss from evaporation. By this arrangement corkscrews are entirely superseded. Direction.—The stopper is taken out by pressing the thumb first on one side and then on the other." (Blown in bottle) "Sir Robt. Burnett & Co. London Dry Gin."

Misbranding of the product was alleged in the libel for the reason that it was labeled and branded so as to purport to be a foreign product when not so, in that each of the bottles bore a label in substance and character as set forth above by virtue of which said label and brand the article purported to be a foreign product, to wit, a product of London, in the Kingdom of Great Britain, whereas, in truth and in fact, the said article of food was not a product of London in the Kingdom of Great Britain, but had been produced in the city of New York, in the State of New York, in the United States of America.

On February 2, 1912, Sir Robert Burnett & Co. (Inc.), claimant, New York, N. Y., filed its demurrer and exceptions to the libel, which were argued on February 5, 1912, and on February 7, 1912, the exceptions to the libel were overruled, without prejudice, as will more fully appear in the following opinion by the court:

McPHERSON, C. J. With nothing whatever before me except the libel and the claimant's objections (whether they are named exceptions or demurrers is of slight importance), I do not think I should decide now that this libel is either sufficient or insufficient. The district court in Michigan (*United States v. Schurman*, 177 Fed. 581) evidently had affidavits before it showing certain facts which influenced the decision; the ruling does not rest upon the mere language of the libel.

The objections are overruled, but without prejudice, etc.

On October 22, 1912, claimant's answer to the libel was filed and on October 23, 1912, an amended libel was filed in which it was charged that the product was further misbranded in that it was labeled and branded so as to deceive and mislead the purchaser thereof and to purport to be a foreign product when not so, in that the principal label thereon, as hereinabove set forth, was in resemblance and similitude as to arrangement and design to a label and brand which had theretofore been widely used and was well known to the trade in connection with and as theretofore borne upon a genuine imported gin, the product of, and represented to be the product of, London, England, which resemblance and similitude as aforesaid was calculated to deceive and mislead the purchaser of the said article into believing that said article was the product of London, England, and by virtue of which said resemblance and similitude the said article purported to be a foreign product, to wit, a product of London, England, whereas it was not a product of London, England, but was a product of the United States of America.

On April 25, 1913, the case came on for trial before the court and a jury and after the submission of evidence and argument by counsel the following charge was on April 26, 1913, delivered to the jury by the court:

*McPHERSON, Judge.* Gentlemen of the Jury: My instructions to you will be very brief, because I think you will probably have seen for yourselves, from the discussion to which you have listened, that this is a comparatively narrow question. Indeed, I may leave out the adverb and say that it is a narrow question. The Government's case depends entirely, I may say,—certainly it depends essentially—upon the sense in which the word "London" is used upon this label. The label that is complained of speaks of "London Dry Gin." It also adds—I forget the precise phrase—"Distilled in New York." I think, "as in Vauxhall, London." But the Government's complaint is essentially based upon the use of the word "London" in the phrase "London Dry Gin"; for evidently if there was no such word upon the label, the Government would have no case. If the label simply said "Dry Gin" there would of course be no case here.

Now this proceeding has been brought under the Pure Food Law, to which reference has been made, and it is not the ordinary civil suit, neither is it the ordinary criminal suit. It occupies a place between those two proceedings. It is a suit to enforce a penalty, and it was begun on the part of the United States by seizing the property that is, in effect, before you now. Two seizures were made, but the cases are being tried together. Each of them concerns three dozen bottles of this gin. The attempt is made by the Government to forfeit that property, that is, to take it away from the claimants, this company which is defending the suit, and to destroy it, or to take some other means of disposing of it; at all events, to forfeit and take it away from the claimants. Now that is a remedy which is severe. It is an unusual remedy to be invoked. The ordinary suit is a proceeding with which you are entirely familiar, where two citizens meet each other in court to dispose of a difficulty between them and which is settled according to the ordinary methods of procedure. There the plaintiff is only obliged to make out his case by the fair weight of the evidence, and, if he offers evidence which is better than his opponent's, even if it is only slightly better than his opponent's, he is entitled to his verdict. That is what we mean, as you know, by the fair weight of the evidence, or preponderance of the evidence. That is the rule in a civil suit. Now if a man is charged with a crime, a much more severe burden is imposed upon the Government in that case; for the Government is always the complainant in a criminal suit. The Government is there obliged to make out its case by evidence that is much stronger; that is, evidence beyond a reasonable doubt. I need not dwell upon that. You have often, no doubt, in your experience in courts, been instructed with regard to that matter. Now the case we are trying comes between those two kinds of cases. It is much more severe than the first remedy and it is not as severe as the second, because there is nobody here charged with a crime and no punishment can be inflicted upon any person in consequence of the verdict. But the result of the verdict, if in favor of the United States, would be to take this property away from the owner and, therefore, the remedy is a severe remedy, and, as I think, the rule with regard to the burden upon the Government is also heavier than if it were an ordinary suit between individuals. I think the Government is bound to offer evidence that is—what language shall I use? Clear and satisfactory has sometimes been said; clear and convincing is another way in which it has been put. I am aware that I am not giving you very definite ideas upon the subject, but the nature of the subject is such that I can not give you definite and positive ideas. I must use

general terms to describe it, and I do not know that I can do better than to say that the Government must offer better evidence than just the mere weight, if you were weighing, if you were deciding between parties. It must be stronger and better evidence than that and I have already said, and I say it again, that it must be clear and satisfactory, or clear and convincing, and with that I shall leave it. If the evidence is not, in your judgment, of that character, then the Government has failed to offer the kind of evidence which the law lays upon it, requires it to offer, and your verdict would have to be in favor of the defendant.

Now that brings me to what I desire to say with respect to the charge itself. The Government puts the charge in two different ways. The evidence is substantially the same as to each, but they rest upon different provisions in the statute and they do differ, in my judgment, in a certain degree. One of the charges which the Government lays before you in each of these cases is based upon the provision of section 8, which refers to "any food product which is falsely branded as to the State, Territory or country in which it is manufactured or produced," and the Government has, in part of its written charge, declared that this article was falsely branded with regard to the country where it was produced. Now that charge may be made out by evidence which shows that the label does not tell the truth with regard to the country where the article was produced. It makes no difference whether that failure to tell the truth was the result of design or was merely unintentional or accidental. The act of Congress has chosen to punish the failure to tell the truth on that subject and, therefore, if this label does not tell the truth with regard to the country in which this gin was produced, then the Government has made out its case under this particular portion of the statute.

Now, as I have said, the case of the United States rests essentially upon the use of this word "London" in connection with the words "Dry Gin." What, then, does "London Dry Gin" mean? This is a question of fact which I intend to submit to you. Does it mean a particular kind of gin, entirely irrespective of the place where the gin was manufactured, or does it mean gin that was made in London? You have heard in argument various suggestions upon one side or the other about that; for example, Saratoga potatoes. Nobody supposes that that means potatoes made in Saratoga. French fried potatoes, if I may continue the use of that vegetable—nobody supposes they are fried in France; and so one might go on. On the other hand, there are words that have a geographical meaning and have no other. I will not give any examples of them, for fear I might not get one that was exactly right, but, as you know perfectly well, there are such words, pure geographical words, that have that meaning and have no other. Now the Government says that this word "London" in this phrase "London Dry Gin" means, geographically, that the gin was produced in London and was not produced anywhere else. On the other hand, the case of the defendant is that this word has come to have, in the course of usage, a meaning which is not geographical, but refers to the qualities and the kind of article which has been produced here before you. Now what is the fact? I submit it to you for your determination. If this word in this phrase "London Dry Gin" has come to have a meaning in reference to the kind of article and does not refer to the place where it was made, then the Government's case entirely disappears and your verdict would have to be in favor of the defendant. I shall not go over the evidence. It would be superfluous, as it has been discussed and you only heard it yesterday. As you will recall, there is evidence on both sides of that question, and you must take the evidence and decide for yourselves what the fact is as to that subject.

Now, that is the first charge that is presented here by the Government. The second differs essentially in this respect: The Government charges that this label was framed for the purpose of deceiving and misleading the purchaser. Now you see that introduces an element we have not in the first charge, namely, the intention of the person that made the gin, the distiller of the gin. What is the fact in that regard? The evidence that has been offered here upon one side or the other—I mean with reference to the other branch of the case—has some bearing upon this branch also and, in addition to that, there is evidence that has a bearing only upon this branch of the case, namely, the evidence offered by the defendant with regard to what took place before the Secretary of Agriculture and before one of the agents of that Department in New York. That, in my judgment, bears upon the question of intention and I submit it to the jury, for their determination, to be weighed by them in that regard. Taking all the evidence, then, upon the subject—and I think all the evidence in the case bears upon the second branch of it, namely, the intention to deceive; the character of the label itself, the type in which it is printed, the communications and proceedings before and with the Department of Agriculture and all the other evidence in the case upon the subject—decide whether or not the second branch of the Government's charge has been made out, namely, that this label was adopted and has been used for the purpose of deceiving and misleading the purchaser.

Now that is the case before you which is to be made out by the Government on one or both of those charges, by the quality of evidence to which I have referred; and, in order that we may know with definiteness just what your conclusions may be, I shall ask the jury to answer these questions as part of their verdict, no matter whether they find in favor of the United States or find in favor of the defendant. The questions are so framed that you can answer them either yes or no. There are only three of them, and they are brief.

The first question is: Is there a distinct kind of gin known as London dry gin? The answer to that will be yes or no.

The second question is: If there is, must this kind of gin be made in London and nowhere else? Of course, you can answer that also yes or no.

The third question refers more particularly to the second charge of the Government. It is this: In using the label in suit, did the maker of the gin intend to deceive or mislead the purchaser by representing the gin to be a foreign product when, in truth, it was not a foreign product? That you can answer yes or no. I am not going to ask you to remember those questions. I will give them to the foreman.

Mr. Johnson has just called my attention to what he supposed to be an omission, namely, that I had not referred to the fact that the label contained the words "Distilled in New York as in Vauxhall, London." But, as you remember, I did so allude to it, but I mention it again in case there is to be any doubt on the subject. Besides, you will have the label before you, so that you can inspect it for yourselves.

I answered the defendant's first point in the charge and the second point I refuse.

Mr. BRINTON. May I record an exception? It is rather a statement to the court than an exception. The Government most respectfully excepts to that portion of the charge which advises the jury that the Government's case relies almost entirely, or practically entirely, upon the use of the word "London," for the reason that the Government relies equally upon the charge that the label used by the defendants is in similitude and resemblance to the imported label, and, in this connection, the Government respectfully urges that the Court has adopted a view of the second charge of the libel which is not the meaning which was intended to be given to it, or which it holds, or should hold. The second charge of the libel charges that "the principal label thereon as hereinabove set forth was then and there in resemblance and similitude as to arrangement and design to a label and brand which had theretofore been widely used and was well known to the trade in connection with and as theretofore borne upon a genuine imported gin, then and there the product of, and represented to be the product of, London, England, which resemblance and similitude as aforesaid was then and there calculated to deceive and mislead the purchaser of the said article into believing that the said article was the product of London, England, and by virtue of which said resemblance and similitude the said article did then and there purport to be a foreign product," and the Government submits that that charge does not raise an issue of intention, but the issue as to whether this similitude between this label and the foreign label is, in itself, calculated to lead persons to believe that the article is a foreign product and, therefore, that it purports to be such. It certainly was not the intention to charge intention, as the Government conceded that is not the issue in this case.

The COURT. In response to what the Government has said, if I did not allude to the foreign label, it was because I did not hear it much alluded to in the course of the trial or in the argument; but I am glad to have my attention called to it, and I say to you distinctly that, as the foreign label, that is the label on the foreign product, has been introduced in evidence here, it is before you for purposes of comparison with the domestic label and in order that you may give such weight to it as you think it ought to have in connection with the other instructions that I have given you. I decline to say to you that the intention of the defendant is of no consequence in this matter. If I understand what the implied meaning of the words "deceive" and "mislead" is, it necessarily means that there is an intention to lead somebody astray. I can not understand that you could talk of someone deceiving another unless he was intending to do it. Besides, the first part of this section, section 8, under which the first charge of the Government is drawn, I have explained to you, and that would cover a case where the mere facts were of the kind I have alluded to and where there was no question of intention in it at all. I can not see the point of having these two charges brought by the Government unless they were intended to be different, and, upon the construction just suggested to me, they are the same.

Mr. BRINTON. The Government respectfully excepts to the submission by the court to the jury of the question substantially to the effect as to whether there is a distinct kind of gin known as London dry gin, submitting that the question, if such a question is to be submitted, should be to the effect as to whether there is a distinct kind or type of gin known generally throughout the trade of the United States as London dry gin.

The COURT. With regard to that suggestion, which is now made for the first time, I say that I think there is a good deal of force in that, as this gin in question was offered to the American public, and I accept the suggestion of the United States in that respect and you may so consider it.

The point for charge presented by the defendant, which was refused by the court without reading, is as follows:

"2. Under all the evidence, your verdict must be for the defendants."

Questions to be answered by the jury:

Q. No. 1.—Is there a distinct kind of gin known as London dry gin? A.—Yes.

Q. No. 2.—If there is, must this kind of gin be made in London and nowhere else? A.—No.

Q. No. 3.—In using the label in suit, did the maker of the gin intend to deceive or mislead the purchaser by representing the gin to be a foreign product when in truth it was not a foreign product? A.—No.

Thereupon the jury retired and after due deliberation returned into court with its verdict in favor of the claimant company.

On April 30, 1913, a motion for a new trial was filed on behalf of the United States and on May 15, 1913, a new trial was refused, as will more fully appear upon the following opinion by the court:

MCPHERSON, *Circuit Judge*. It can hardly be doubted I think that the Government's treatment of the claimant in this dispute leaves something to be desired. In consequence of a difference of opinion between the Department of Agriculture and the claimant concerning the label now in question the subject was discussed and considered, and in the end the Department announced distinctly that the objection of misbranding would not be taken. The claimant thereupon proceeded to use the label for 9 months, when the Department changed its mind without previous warning, and, without giving the claimant an opportunity to conform to its new attitude, made two separate seizures, taking the position now that the bottles *were* misbranded. Under the circumstances this seems rather drastic action and can hardly be commended; at all events, it leaves the Government without apparent equity in its favor.

Neither, I think, is any legal support left in view of the special findings that accompanied the general verdict. The indispensable basis of the attack upon the label is the averment that "London Dry Gin" is a descriptive phrase, which points to the place of origin and not the kind of liquor. If, however, "London Dry Gin" describes a well-known liquor, having certain characteristics that identify it wherever it may be made, the Government's case is wholly without foundation, no matter under which clause of section 8 of the Food and Drugs Act the seizure may be defended. And this is precisely the point upon which the evidence conflicted, and is precisely the point determined by the jury in two special findings that make part of the verdict. Two of the questions put by the court and the answers thereto are as follows:

1. Is there a distinct kind of gin known as London dry gin?

Answer: Yes.

2. If there is, must this kind of gin be made in London and nowhere else?

Answer: No.

These findings I think conclusively repel the charge of using a label forbidden by the act; and (if the claimant had a right to use the label) it is immaterial to consider the questions raised by the Government upon the subject covered by the third question and answer:

3. In using the label in suit, did the maker of the gin intend to deceive or mislead the purchaser by representing the gin to be a foreign product?

Answer: No.

Of course the verdict does not and cannot, lay down a general rule even in reference to this particular phrase. The jury necessarily acted upon a certain amount and quality of evidence, and as this might not be present in another dispute with another claimant, the verdict can do no more than settle the one controversy that was in issue.

Altho the instructions to the jury concerning the quality of evidence required to make out the Government's case are not complained of, I may say briefly that a difference of opinion on this subject no doubt exists. A decision by the court of appeals in the fourth circuit—*Grain Distilling Co. v. United States*, 24 Treasury Decisions (Mar. 13, 1913), p. 74, No. 1837—having been called to my attention, I may cite a recent opinion in the contrary sense by the court of appeals in the second circuit—*United States v. Regan*, 203 Fed. 433.

The motion for a new trial in each case is refused.

On May 29, 1913, a bill of exceptions was filed on behalf of the Government and on July 22, 1913, the final decree of the court was entered. By the terms of this decree it was ordered, first, that the motion by the libellant for a new trial upon the issues of fact by the jury be refused; second, that the findings of the jury in favor of the claimant upon the issues of fact submitted to them be confirmed, and that in accordance therewith the libel filed in the cause be dismissed and the costs of the cause be borne by the libellant, and third, that the United States marshal forthwith deliver the product seized under the authority of the writ issued in the cause to the claimant, Sir Robert Burnett & Co. On July 25, 1913, assignments of error and a petition for a writ of error were filed on behalf of the Government, and an order allowing writ of error was filed and said writ of error was allowed and same is now pending to the United States Circuit Court of Appeals for the Third Circuit. On February 2, 1914, the case having come on for hearing in the Circuit Court of Appeals, before Gray and Buffington, Circuit Judges, and Young, District Judge, the judgment of the court below was reversed and a new trial granted, as will more fully appear from the following decision by the court:

YOUNG, *D. J.* This is a proceeding by the United States for the condemnation of certain bottles of gin alleged to be misbranded in violation of the Food and Drugs Act of June 30th, 1906. The 8th section of that act provides that an article shall be deemed to be misbranded, "if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so." The cause went to trial before a jury upon the libel and amended libel and answer thereto by Sir Robert Burnett and Company, the claimant. The libel alleges that the bottles were labeled and branded so as to purport to be a foreign product, whereas they were in fact a domestic product. The amended libel alleges that the bottles were labeled and branded so as to deceive and mislead purchasers thereof and to purport to be a foreign product when not so.

The assignments of error raise the single question whether or not in a proceeding under the Food and Drugs Act for the condemnation of misbranded articles the intent of the claimant is a necessary ingredient in the determination of the case. The learned trial judge admitted evidence, over the Government's objection, for the purpose of showing good faith in the branding and absence of an intention to deceive. The court also submitted the question of intent as follows:

"The third question refers more particularly to the second charge of the Government. It is this: In using the label in suit, did the maker of the gin intend to deceive or mislead the purchaser by representing the gin to be a foreign product, when in truth, it was not a foreign product."

Under the libel and amended libel the sole question was whether the packages were so labeled and branded as to deceive and mislead the purchaser. This was not the question submitted to the jury, but the question submitted to the jury was, as we have seen, did the maker of the gin intend to deceive or mislead the purchaser?

The court was in error in submitting the question of intention to the jury. The Food and Drugs Act nowhere requires proof of intention by the use of the words knowingly, wilfully, or such like words. The language of section 8—in the case of food—subsection second, of the act is: "If it be labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so." This language clearly means, if the label deceives or misleads the purchaser; if the purport of the label be that it is a foreign product when it is not so. This the label and the label alone must determine. The intention of the user to deceive is of no consequence. The act strikes at deceiving the public by selling them one thing when they desire to purchase another. As has been frequently said by courts, the purchaser has the right to choose for himself what he will purchase, and when he has purchased the right to receive that which he desires and not something else. It would be destructive of the act, nullify it entirely, to allow the intent of the maker to be considered as a defense. We believe the decided cases sustain the principle that the intent is not a necessary ingredient in the determination of the case.

In *McDermott v. Wisconsin*, 228 U. S. 115, it is said by Mr. Justice Day on page 132:

"The label upon the unsold article is in the one case the evidence of the shipper that he has complied with the act of Congress, while in the other by its misleading and false character it furnishes the proof upon which the Federal authorities depend to reach and punish the shipper and to condemn the goods. If truly labeled within the meaning of the act his goods are immune from seizure by Federal authority; if the label is false or misleading within the terms of the law, the goods may be seized and condemned. In other words, the label is the means of vindication or the basis

of punishment in determining the character of the interstate shipment dealt with by Congress."

It is the purchaser that is to be protected.

"The purchaser has a right to determine for himself which he will buy and which he will receive and which he will eat. The vendor cannot determine that for the purchaser. He, of course, can make his arguments, but they should be fair and honest arguments"; *United States v. 100 Cases of Tepee Apples*, 179 Fed. Rep. 987.

In *United States v. Johnson*, 221 U. S. 488, Mr. Justice Holmes says, at page 497:

"In further confirmation it should be noticed that although the indictment alleges a wilful fraud, the shipment is punished by the statute if the article is misbranded, and that the article may be misbranded without any conscious fraud at all."

In the *District of Columbia v. Lynham*, 16 App. D. C. 85, it is said:

"It was no defense for a druggist prosecuted for selling an adulterated drug in violation of the act of Congress February 17, 1898, 30 Statutes 246, relating to the adulteration of food and drugs in the District of Columbia, to show simply that he was at the time of sale ignorant of the fact that the drug was adulterated, as he must know what he sells or purports to sell, and that it conforms to the standard prescribed by law."

In *United States v. Five Boxes of Asafoetida*, 181 Fed. Rep. 561, it is said by Judge Holland:

"The article of food or drug adulterated or misbranded is declared to be forfeited as an offending thing which threatens the health of the citizen and therefore subject to seizure without regard to the acts or knowledge of the owners or claimants."

For these reasons, the judgment must be reversed and a new trial granted.

B. T. GALLOWAY, *Acting Secretary of Agriculture*.

WASHINGTON, D. C., March 2, 1914.

**2821. Misbranding of cheese. U. S. v. A. H. Barber & Co. Plea of guilty. Fine, \$100. (F. & D. No. 3295. I. S. No. 3038-d.)**

On May 3, 1913, the United States Attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against A. H. Barber & Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on August 3, 1911, from the State of Illinois into the State of Georgia, of 100 boxes of cheese which was misbranded. The product was labeled: "Superlative Full Cream Cheese." Each of the boxes also bore a figure marked thereon indicating the net weight of the cheese contained therein.

Examination of the product by the Bureau of Chemistry of this Department showed that the actual weight of the cheese contained in said 100 boxes was 2,096 pounds, while the sum of the marked weights on the 100 boxes was 2,147 pounds, making a shortage of 51 pounds, or 2.37 per cent. Misbranding of the product was alleged in the information for the reason that said 100 boxes, and each of them, bore figures indicating the net weight of the product contained in each of said boxes and which said figures borne upon 47 of the 100 boxes containing the product were false and misleading, in that the figures upon each of the 47 boxes purported to state the net weight of the article contained in each of said 47 boxes, whereas, in truth and in fact, each of the 47 boxes did not contain the net weight of the product indicated by the figures borne upon each of the 47 boxes, but contained a much less quantity, to wit, one pound less than the net weight of the product indicated by the figures borne upon each of the boxes. Misbranding was alleged for the further reason that said figures borne upon 47 of the boxes deceived and misled the purchaser into the belief that said figures on each of the 47 boxes purported to state the net weight of the product contained in each of said boxes, whereas, in truth and in fact, each of the 47 boxes did not contain the net weight of the product indicated by the figures borne upon each of said boxes, but contained a much less quantity of the product, to wit, one pound less than the net weight of the product indicated by the figures borne upon each of the 47 boxes aforesaid. Misbranding was alleged for the further reason that the product contained in the 47 boxes aforesaid, when it was shipped, was in package form and the figures that appeared upon the outside of each of the 47 boxes purported to state the con-